
(1998) 02 GAU CK 0050
In the Gauhati High Court
Case No : Criminal Revision No. 652 of 1997

Suresh Prasad Gupta and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 439, 482

Citation : (1998) 4 GLT 226

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : C. Baruah, N. Baruah and H. Rahman, for the Appellant; A. Mannan, Public Prosecutor, for the Respondent

Judgement

V.D. Gyani, J.—Heard learned Counsel for the Petitioner and also Penal Lawyer for the State. By this petition u/s 482 Code of Criminal Procedure, the Petitioner prays for quashing the order dated 5.11.97 as passed by the learned Sessions Judge, Dibrugarh in Criminal Misc. Case No. 203 of 1997 thereby directing immediate arrest of accused Petitioner Suresh Prasad Gupta and Ram Nivash Singh by revoking the earlier bail order passed in their favour, exercising his power u/s 439(2) Code of Criminal Procedure. This order has been challenged on several grounds.

2. Learned Counsel for the Petitioner contended that the Excise business is controlled by the State Government and the Petitioners were arrested on 3.10.97 along with others, they were produced before the C.J.M. on 4.10.97. The SDJM granted bail vide order dated 7.10.97 and 27.10.97. Inviting attention to the forwarding letter, Annexure-C it was submitted the liquor did not come directly to the victims from the Petitioners shop. The Sessions Judge on 28.10.97 issued show cause notice calling upon the Petitioners to show cause as to why the bail granted to them should not be cancelled. Thus it is not as if the impugned order has been passed without affording any opportunity of hearing to the accused Petitioners. In fact the accused Petitioners had submitted their reply to the show

cause notice reiterating their stand that they are innocent. There is no substance that the accused Petitioners were heard before cancellation of their bail order. As has been noted by the learned Sessions Judge in his order dated 28.10.97, Annexure-D, the bail was granted to the accused mainly on medical grounds and has also observed that till passing of the bail order, the investigation had not taken a concrete shape. It was for this reason that the learned Sessions Judge in exercise of his power u/s 397 Code of Criminal Procedure read with Section 439 was promoted to consider the legality and propriety of the order passed by the SDJM in admitting the accused Petitioners to bail and issued a show cause notice. Procedure adopted by the learned Sessions Judge cannot be faulted with on any legitimate ground. The Supreme Court of State Vs. Jaspal Singh Gill, has held that the plea that the accused undergone a cardiac operation and need constant medical attention is not sufficient to order his bail. The prison authorities will arrange for proper treatment whenever a need for it arises and the learned Sessions Judge was, therefore, right in his observation. Now, hypertension and diabetes are such common ailments, may be set any one, it does not necessarily help an accused in obtaining a bail order, same is the case with peptic ulcer. In such cases, the Court must guard against such medical certificates when submitted in support of bail petitions, as they are invariably tailored for the occasion.

3. But surprisingly the revision petition is silent about it and the counsel has also not made any submission about it. None of the points as raised by the Petitioner's counsel are of any avail to the Petitioner. But going through the impugned order, the point that emerges from the order itself is:

It seems from the case diary that the owners of the Sessa Mahal are Niranjana Baruah and Pradip Gohain and the owners of the dens of Liquor from which the consumers took their drinks made their end and/or suffered badly are not yet arrested. The investigating Police Officer will arrest them forthwith. It appears from the case diary that the liquor dens run in collusion with the establishment of the local office of the Excise Department. Necessary steps need be taken by a High Power Enquiry body for freeing the Government from involvement in such nefarious dealers.

4. It would thus be seen that the order is essentially based on some entries made in the case diary and if that is the foundation of the cancellation of bail order, mere notice to show cause without apprising the Petitioners of the grounds on which the bail order was going to be or proposed to be set aside, such notice even if given, hardly serves any purpose. There is no charm or magic in the term "notice". The right of notice flows not from mere circumstances that there is a proceeding of judicial nature, in deed it goes deeper and beyond, the basic reason which gives the proceedings its judicious character, and it is for that reason, and the right of a person to know the facts or grounds on which his rights are going to be adversely affected. Admittedly, there was a bail order, right or wrong, and it was sought to be cancelled. Naturally the accused in whose

favour the bail order, was passed, in all fairness is entitled to know on what grounds the order was proposed to be cancelled. Certain facts stated in the case diary which can by no means be said to be within the knowledge of the accused, the Court could of course, make use of those facts contained in the case diary, but as pointed out by the Supreme Court that the police diaries of a case under inquiry or trial can be made use of by a Criminal Court only for aiding it, in such inquiry or trial. The Court would be acting improperly if it uses them in its judgment or seeks confirmation of its opinion on the question of appreciation of evidence from statements contained in such diaries. (See *Habeeb Mohammad Vs. The State of Hyderabad*, Least that was expected of the Court was to apprise the accused as what those entries were on which the bail order was proposed to be cancelled. It should be seen that while issuing show cause notice the grounds on which the proposed action is going to be taken should be indicated in the notice, in other words, he should be afforded an opportunity to put forward his case in the proceedings. It is this affording of opportunity which is missing from the impugned order. Although it has not been raised as a ground either in the petition, nor urged at the time of hearing, but this omission on the part of the Petitioner's counsel is a poor justification for ignoring or over looking such a salient ground which emerges from the impugned order itself, more so when it is of fundamental importance going to the root of the matter.

5. Going through the order sheets, it would be seen that operation of the impugned order dated 5.11.97 had been stayed by a learned Single Judge of this Court vide order dated 12.11.97 and three months have already lapsed since then and no prejudice is going to be cause to the Petitioner if the matter is remanded back to the learned Sessions Judge for disposal in accordance with law keeping the stay order operative for some more time. Meanwhile, the learned Sessions Judge shall supply necessary facts or ground for cancellation of the bail order to the accused Petitioner and dispose of the matter in accordance with law at its earliest, say before 31.3.98. The Petitioner shall appear before the Sessions Judge, Dibrugarh on 25.2.98.

6. With this direction, this petition stands finally disposed of. A copy of this order be sent to the learned Sessions Judge, Dibrugarh.